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Supreme Court, U.S.
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No. 04-1103

In The Supreme Court of the United States

BARBARA SCARBOROUGH, Individually and on behalf of decedent, William A. Scarborough; RHONDA SCARBOROUGH HALTERLEIN, Individually and on behalf of decedent William A. Scarborough; WILLIAM SCARBOROUGH, JR., Individually and on behalf of decedent, William A. Scarborough,

Petitioners,

versus

CLEMCO INDUSTRIES INC., also known as Clemco-Clemintina Ltd.; PULMOSAN SAFETY EQUIPMENT COMPANY; CENTURY INDEMNITY COMPANY, as successor to CCI Insurance Company as successor to Insurance Company of North America; AMERICAN HOME ASSURANCE CO., AND INTERSTATE INSURANCE COMPANY

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

OPPOSITION OF PULMOSAN SAFETY EQUIPMENT COMPANY TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Should *certiorari* be granted to review the decision of the Fifth Circuit, which followed the guidance and rationale of *Miles v. Apex Marine*, 498 U.S. 19, 111 S.Ct. 317 (1990) to maintain uniformity between general maritime law and the Jones Act and DOHSA by limiting the recovery for wrongful death of a Jones Act seaman to pecuniary damages as against all makers of defective vessel equipment or appurtenances, particularly where there is no conflict among the circuits on the issue?

CERTIFICATE PURSUANT TO RULE 24

The undersigned counsel of record for Appellee, Pulmosan Safety Equipment Company, identifies all of the parties appearing here and before the United States Court of Appeals for the Fifth Circuit, and who now have an interest in the outcome of this case:

Barbara Scarborough
Rhonda Scarborough Halterlein
William Scarborough, Jr., petitioners
Clemco Industries, Inc., (no subsidiaries)
Pulmosan Safety Equipment Company
(has no subsidiaries)
Century Indemnity Company, as successor to
CCI Insurance Company, as successor to Insurance
Company of North America, as respondents

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OPINIONS BELOW

The opinion of the Fifth Circuit Court of Appeal is reported at 391 F.3d 660 and is reprinted in petitioner's appendix at App. 1. The district court's opinion is reported at 264 F.Supp.2d 437, and is reprinted in petitioner's appendix at App. 17.

JURISDICTION

Respondent does not contest the existence of jurisdiction of this Court to *consider* the petition for writ of *certiorari* pursuant to 28 U.S.C. § 1254(1), the petition having been filed on February 17, 2005, within 90 days of the entry of the judgment and opinion by the Fifth Circuit Court of Appeals on November 18, 2004.

STATUTORY PROVISIONS INVOLVED

The Jones Act, 46 U.S.C. § 688, is reprinted in petitioner's appendix at App. 65. In addition, also involved are portions of the Death on the High Seas Act, *to-wit*: 46 U.S.C. App. § 761(a), providing for a cause of action under The Death on the High Seas Act, states in pertinent part as follows:

> Subject to subsection (b), whenever the death of a person shall be caused by wrongful act, neglect or default occurring on the high seas beyond a marine league from the shore of any state, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts

> of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

46 U.S.C. App § 762, addressing types of damages recoverable under the Death on the High Seas Act, states in pertinent part:

> (a) The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.
>
> (b)(1) If the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of any state, or the District of Columbia, or the Territories or dependencies of the United States, additional compensation for nonpecuniary damages for wrongful death of a decedent is recoverable. Punitive damages are not recoverable.

STATEMENT OF THE CASE

The instant wrongful death suit flowed from the same pulmonary injuries that were the subject of the suit filed by plaintiffs' decedent in the Eastern District of Louisiana on August 15, 1977. There, William Scarborough had filed a "Seaman's Complaint" against a set of defendants, including makers of vessel equipment/appurtenances,

Pulmosan and Clemco, alleging their blasting ricochet hoods made the vessel unseaworthy, and whose selection for use in accomplishing the vessel function constituted negligence of the Jones Act employer.

The personal injury case of Mr. Scarborough was tried before a jury to a large verdict that included Scarborough's past and future pain and suffering and lost future lifetime wages, which was entered by way of judgment dated June 18, 1981. The jury found Scarborough to be a seaman, the vessel's equipment/appurtenances defective such to render the vessel unseaworthy, and found the Jones Act Employers 60% at fault, Clemco 23% and Pulmosan 17%.

Mr. Scarborough died on March 21, 2002. His three survivors, his wife and two major children, sued for wrongful death in the same district court on January 10, 2003. They specifically alleged collateral estoppel applied against defendants, and that the death was a result of the progression of the disease solely caused by the pulmonary exposures occasioned by his work aboard the CC/L&M vessels. Aware of the limits of maritime remedies, plaintiffs intentionally pled diversity jurisdiction in a studied attempt to avoid the application of maritime law and the result suggested by the *ratio decidendi* of *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 275 (1990). On March 10, 2003, plaintiffs moved for a summary judgment on the issue of liability, citing offensive collateral estoppel based on the 1981 verdict. Defendants, Clemco and Pulmosan, and their alleged insurers, also moved for partial summary judgment to obtain a ruling that plaintiffs' claims were limited to pecuniary damages only.

The district court, after substantial briefing and oral argument, entered an order, reported at 264 F.Supp.2d 437 (E.D. La. 2003) (Petitioner's App. 17), which ruled that defendants were correct on the issue of plaintiffs being limited to pecuniary damages for a seaman death action, even against non-employers.

Judge Berrigan ruled that plaintiffs' decedent had been found to be a Jones Act seaman, and that the record showed plaintiffs had vigorously and successfully argued for that status, as well as for recovery under unseaworthiness on account of the Clemco/Pulmosan hoods being essential appliances or appurtenances of the vessels. The District Court dug through the record and correctly noted that:

> "The Final Pre-Trial Order confirms that the factual basis for all claims made against all defendants in *Scarborough I*, including the factual basis for the claims of unseaworthiness against the vessel owners was the 'inadequate and deficient tools, supplies, appliances, and equipment, and manned by improperly trained, deficient, and inadequate officers and crew,' specifically that equipment manufactured and supplied by Pulmosan and Clemco. (*Scarborough I* Rec.Doc. 457, Final Pre-Trial Order at 11-12)."

264 F.Supp.2d at 444, Petitioner's App. at 31.

Judge Berrigan, as affirmed by the Fifth Circuit, also found that maritime jurisdiction and law would properly apply today as to the equipment/appurtenances at issue, a ruling plaintiffs have not sought to have reviewed by this Court and which is now final. As such, general maritime law would provide the available remedies which should be construed to exclude non-pecuniary damages for wrongful

death claims of the seaman's family under a fair reading and application of the principles that were articulated by this Court in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990).

The Court of Appeals, Fifth Circuit, reviewed the matter under a *de novo* standard and affirmed. 391 F.3d 660 (5th Cir. 2004). The Court reasoned that the Jones Act and the Death on The High Seas Act ("DOHSA"), 46 U.S.C. App. § 761-762 were "highly analogous" to the factual scenario of this case, as to which the courts should take cognizance in deciding the contours of the general maritime law. 391 F.3d at 668; Petitioner's App. at 15-16. The Fifth Circuit also found that uniformity could and should be maintained here between the Jones Act and GML wrongful death recoveries. *Id.*

The Fifth Circuit's ruling herein was consistent with the other circuit court of appeal that has addressed the issue, so there is absolutely no split among the circuits. *See Davis v. Bender Shipbuilding & Repair Co.*, 27 F.3d 426, 430 (9th Cir.), *cert. denied*, 513 U.S. 1000 (1994). In addition, the court in *Preston v. Franz*, 11 F.3d 357, 358 (2nd Cir. 1993), and *Wahlstrom v. Kawasaki Heavy Industry, Ltd.*, 4 F.3d 1084, 1089 (2nd Cir. 1993), *cert. denied*, 510 U.S. 1114 (1994) ruled that the policies favoring limiting wrongful death recoveries to pecuniary damages that were evinced by Congress in the Jones Act and DOHSA are not strictly confined to the four corners of the acts. Their approach and rationale are consistent with the decisions of the Fifth and Ninth Circuit Courts of Appeal.

STATEMENT OF FACTS

From 1959-1967, Mr. Scarborough had been assigned to a series of raked-bow vessels whose primary function was navigate to and abrasive blast various structures located far out in the Gulf of Mexico. Under his own counsel's questioning, Mr. Scarborough testified as to his assignment to several such vessels in the Coastal Coatings/Land & Marine ("CC/L&M") fleet, on which he slept, took meals, assisted in navigation, relief-captained, moored, unloaded and loaded, and operated equipment permanently affixed to the vessels that was always used to carry out its mission while plying navigable waters. Scarborough's seaman's work was done primarily on the high seas, beyond the territorial waters of Louisiana. *See* 391 F.3d at 666, Petitioner's App. at 12. Mr. Scarborough's function always involved being on or connected to the vessels, as "everything came from the boat." His work and use of hoods was integral to the mission and function of the vessel.

In connection with his work as a seaman completing the function of these vessels during the years 1959 to 1967, Mr. Scarborough inhaled silica and other dusts, injured his lungs and developed silicosis. He sued as a Jones Act seaman in 1977, via his "Seaman's Complaint."

The connection of Clemco's and Pulmosan's hoods as essential vessel appliances or appurtenances can be found in the pretrial order referred to in the district court's decision, 264 F.Supp. at 44; Petitioner's App. at 31, where plaintiff stated:

> Plaintiff, while employed as a sandblaster painter by defendant, Coating Specialists, Inc., for the period 1959 through the third quarter of

1963, and by defendant, Land & Marine Applicators, Inc., from the third quarter of 1963 through the second quarter of 1967 worked aboard various vessels owned and operated by his employers as a seaman and a member of the crew.

* * *

During the aforesaid years plaintiff, as a consequence of the negligence of his employers and the unseaworthiness of his vessels, contracted silicosis as a result of injury by disease, or both. Plaintiff contends that his employers' vessels were unseaworthy in that they were equipped with inadequate and deficient tools, supplies, appliances and equipment, and manned by improperly trained, deficient and inadequate officers and crew. The plaintiff further contends that the aforesaid vessels were unseaworthy in that the crew members, such as plaintiff, were knowingly required to work under hazardous, dangerous and unsafe conditions aboard unsound vessels.

Finally, plaintiff contends that his aforesaid employers were negligent in failing to provide him with a safe place to work, safe equipment, proper equipment, adequate instructions, and adequate supervision, because he knew, or by the exercise of reasonable care, should have known, of the hazards involved in sandblasting, particularly that of contracting silicosis, and failed to warn plaintiff of the danger thereof or provide him with known and adequate equipment and materials that would have prevented the occurrence thereof

* * *

> [Defendants] knew, or by the exercise of reasonable care that the equipment being furnished to plaintiff was not adequate to protect him from the danger of contracting silicosis.

Based on Mr. Scarborough's extensive testimony as to his assignment to the defendants' vessels, his use of appurtenances (made by defendants) as an integral part of his performing the core function of the vessels, as well as his handling of navigation and mooring duties, the jury answered "yes," to specific interrogatories that Mr. Scarborough was a seaman, that his seaman work caused his injuries, that the hoods were deficient and the vessels were unseaworthy and that the employers were negligent for using them on board. A very large sum (for 1981) was awarded for the permanent disability of and injury to Mr. Scarborough, thus covering all future support of his family, and for Scarborough's pain and suffering until death.

Mr. Scarborough died on March 21, 2002, thus creating a new cause of action for wrongful death to be assessed under maritime law, which is the subject of this proceeding.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

The decision of the Fifth Circuit is consistent with the decisions by the other circuit court which has addressed the issue. *Davis v. Bender Shipbuilding & Repair Co.*, 27 F.3d 426, 430 (9th Cir.), *cert. denied*, 513 U.S. 1000 (1994). In addition, the court in *Preston v. Franz*, 11 F.3d 357, 358 (2nd Cir. 1993) (the policies of the Jones Act and DOHSA in eliminating non-pecuniary damages for wrongful death

provide guidance as to the construction of general maritime law, even if the statutes do not specifically apply to the claim) and *Wahlstrom v. Kawasaki Heavy Industry, Ltd.*, 4 F.3d 1084, 1089 (2nd Cir. 1993) *cert. denied*, 510 U.S. 1114 (1994) ruled consistently with the rationale used by the Fifth Circuit here. Thus, there is no conflict among the circuits that would justify expenditure of this Court's precious resources to resolve.

Additionally, the ruling below is entirely consistent with This Court's reasoning and holding in *Miles v. Apex Marine*, 498 U.S. 19 (1990), that general maritime law should be construed to be consistent with Congressional policies to limit wrongful death recoveries to pecuniary damages in wrongful death, which are clearly expressed in both the Jones Act and the Death on the High Seas Act ("DOHSA"), the latter of which was amended in 2000, retaining the application of the non-pecuniary limitations in the maritime realm, while discarding it as to "commercial aviation accidents."

ARGUMENT

The *Miles* Principle

In *Miles*, *supra*, This Court firmly resolved to adopt a uniform matrix of remedies for seamen wrongful death, regardless of location of the casualty or the grounding in Jones Act, DOHSA, or GML liability, and concluded:

> We must conclude that there is no recovery for loss of society in a general maritime action for the wrongful death of a Jones Act seaman.

* * *

> Today we restore a uniform rule applicable to **all actions** for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law.

498 U.S. at 32-33, 111 S.Ct. at 326 (emphasis supplied).

Plaintiffs' petition seeks a holding that this Court in *Miles* evinced no broad policies, and, further, that there is no connection or "overlap" between maritime law and the Jones Act. If that were the case, this Court would not have taken the pains to refer to the absence of non-pecuniary damage in DOHSA, as well as in the Jones Act. 498 U.S. at 29-30, 111 S.Ct. at 324. Additionally, one of the defendants in *Miles* was a non-employer who had supplied the worker who ended up attacking the plaintiff on board the vessel. The limiting of recoverable damages to pecuniary losses was applied to all of the defendants. Moreover, by 1990, uniformity was not a novel issue[1] likely to prompt gratuitous comments or reference by this Court to any law other than the Jones Act, unless a broader concept was being articulated as to seaman death remedies.

This Court in *Miles* also would have had no need to discuss uniformity of general maritime law if it were confining its uniformity policy just to the four corners of the Jones Act, *e.g.*, only against the Jones Act employer. The Congressional statutory *policy* of excluding non-pecuniary damages in *several* statutes was found relevant to defining consistent contours for seamen remedies in general maritime law. And the GML, unlike in 1977 when Judge Heebe handled *Scarborough*, now encompasses

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[1] *E.g.*, *Mobil Oil v. Higginbotham*, 436 U.S. 618, 98 S.Ct. 2010, 56 L.Ed.2d. 581 (1978).

products liability. *East River Steamship Corp. v. Transamerica Delaval*, 476 U.S. 858, 106 S.Ct. 2295 (1986). It is logical for the general maritime law to be construed consistent with the policies evinced by Congress in statutory laws, particularly where the same limitation appears both in a seaman statute (the Jones Act) *and* in one not limited to seamen, but which covers navigation on the high seas (DOHSA).

In 2000, Congress revisited the pecuniary damages limitation and chose to lift it only as to "commercial aviation accidents occurring on the high seas beyond 12 nautical miles from the shore of any State . . . " *See* Pub. L. 106-181, April 5, 2000. In so doing, Congress ratified, in very modern times, its intent to limit damages for wrongful death due to marine injuries to those pecuniary in nature. Thus, the rationale of *Miles* has even more statutory support now than existed when it was decided in 1990.

This Court has, in the past, looked to the Jones Act for guidance in contouring the general maritime law, with an eye to maintaining uniformity. For example, in *Miles*, 498 U.S. at 23-24, 111 S.Ct. at 321, the Court noted the recognition in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 388, 90 S.Ct. 1772, 1781, 26 L.Ed.2d 339 (1970) that the Jones Act and DOHSA both evinced a policy favoring the existence of a wrongful death action for deaths occurring in territorial waters and on the high seas. The desire by Congress for uniformity as a reason for enacting DOHSA was also noted by this Court. 498 U.S. at 26, 111 S.Ct. at 322.

Petitioners' argument that no particular act of Congress totally cabins maritime product liability misses the

whole thrust of *Miles*' instruction that the courts not interpret general maritime law in a way inconsistent with Congressional statutory policy evinced in an *area*, such as seamen's death remedies, where Congress *has* legislated. The very logic of avoiding judge-made dissonance between the general maritime law and Congressional policies gleaned from the few statutes that Congress had enacted applicable to analogous claims, strongly suggests that the decision below is a correct one. Maintaining uniformity as to allowable damages for the wrongful death of a Jones Act seaman is a valuable and worthwhile policy that should not be jettisoned, just to maximize recovery by Scarborough's heirs in this case.

Petitioner speaks of passengers having different rights. Passengers are part of a different class of claimants, who, like others, have different levels of proofs – higher than those of a seaman. They, unlike seamen, do not have maintenance and cure, or absolute liability via an unseaworthiness claim. To cite differences between a passenger and a seaman is utterly unhelpful to the issue at hand. The logical implication of petitioner's argument is that uniformity should be jettisoned in *each* case, just because 100% uniformity between all classes of claimants does not exist. This is hardly in line with this Court's policy of achieving uniformity between the GML and certain classes of claimants for wrongful death where Congress has evinced limitations like those in the Jones Act and DOHSA. Petitioner's logic, if accepted, implicitly suggests that this Court's entire exercise in *Miles* was useless, hardly the stuff deserving further review by this Court.

Petitioners' "compare and despair" arguments and strained hypotheticals bearing no semblance to the facts of

this case, lack useful analytical substance or relevance herein. Between *classes* of potential plaintiffs, *e.g.*, passengers or longshoremen versus seaman, there can and will be differences in recoveries. There also are differences of result within a given class, based on the peculiar facts, *e.g.*, some seaman survivors being dependent upon the decedent and some not. That is how the cookie crumbles in life and so in law. Those who are dependent receive large pecuniary recoveries, as did Ms. Scarborough indirectly through Mr. Scarborough's large loss-of-lifetime-earnings recovery in 1981. If there are no dependents, then heirs may receive little or no recovery as the result of a seaman death. If a seaman is instantly killed, there is no maintenance and cure. If he lives, there is. But to say that different facts relating to damages means maritime law should not be uniform as to types of allowable seaman death damages is a *non-sequitur*, and certainly contrary to Congress' established policy as interpreted by this Court in an unmistakable series of cases, including *Higginbotham*, 436 U.S. 618, 98 S.Ct. 2010, 56 L.Ed.2d 581 (1978) and *Miles*, 498 U.S. at 31-37, 111 S.Ct. at 325-28 (1990).

Petitioners cite "special solicitude for seamen" as a whole-cloth substitute for the analysis and rationale articulated in this Court's decision in *Miles v. Apex Marine*, 498 U.S. 19, 111 S.Ct. 317 (1990). However, the solicitude for seamen and non-pecuniary wrongful death damages, as the district court aptly reasoned, were factored in by Congress in the Jones Act, and, "Congress felt non-pecuniary wrongful death damages were properly forfeited in exchange for the privilege that seaman's status wrought." *See* district court opinion found at Petitioner's. App. at 35.

Indeed, in the whole equation, seamen still do quite well in terms of remedies. The worker's compensation exclusive remedy does not exist, there is an easier burden of proof, and the seamen themselves as did Scarborough here, obtain full compensatory damages for their own injuries, including pain and suffering and lifetime earnings losses, with only their families being restricted to non-pecuniary damages in the event of a wrongful death. In addition, the seamen have the benefit of absolute liability under the unseaworthiness doctrine. *See, e.g., Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 550, 80 S.Ct. 926, 933, 4 L.Ed.2d 941 (1960).

The "trade-off" petitioner articulates is far too narrow and fails to consider the entire scheme of recovery available to seamen that results, on the whole, with seamen being treated more than fairly, even as the courts respect the policies evident in the Congressional acts and preserving uniformity by construing general maritime law consistently with those statutory policies. Uniformity is preserved by limiting seaman's family's wrongful death recoveries to pecuniary damages, consistent with the Jones Act and DOHSA statutory schemes. The seaman himself lost nothing here in terms of his own damages. He received both pecuniary and non-pecuniary damages. Virtually no other workers enjoy such privileges, so the "solicitude for seamen" is truly a straw issue and unhelpful as a decisional tool or guide for analysis here.

Seeing to the uniformity of wrongful death (pecuniary) damages under the general maritime law with those of the Jones Act *and* DOHSA remedies for wrongful death is logical, consistent and fair. The seaman himself receives full recoveries, as did Mr. Scarborough here. That his survivors, all of majority, received only pecuniary damages

is not unfair in the entire scheme of things. The result is entirely consistent with the Congressional limitations in such recoveries in the only statutes that address analogous claims. If it is fair for a seaman's family to be so limited as against the seaman's own employer, it is fair as against appurtenance makers. The contours of the general maritime law were properly set with the Jones Act and DOHSA in mind as to the *area* of wrongful death recoveries on behalf of a seaman. Congress' policy to limit marine wrongful death recoveries to pecuniary losses, as was originally expressed in those acts and as was recently reiterated by retaining these restrictions for maritime claims in the 2000 amendments to DOHSA, together, should not be ignored. The policy extends beyond the technical limits of the Jones Act, so it is not crucial that an equipment or appurtenance maker is not an employer under the Jones Act.

The citation of *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 119, 116 S.Ct. 619, 133 L.Ed. 578 (1996) was correctly disposed of by both of the lower courts, who observed that Calhoun was not a seaman and had no connection to seaman's work and perils. Recreational boating by a non-mariner with shallow-draft jet skis has nothing to do with the facts, class of claimant, or commercial maritime interests involved herein. Similarly, negligence of a vessel owner *vis-a-vis* a longshoreman (33 U.S.C. § 933) involves different classes of workers than seamen like Scarborough.

Congress has acted to address wrongful death on the high seas (where Scarborough worked and was injured) and for Jones Act seamen wherever they work. Together, this is clearly enough of a locus of policy under analogous circumstances to justify maintaining uniformity of the general maritime law by the courts to limit damages for

all wrongful deaths *of seamen*. The Fifth Circuit's position below was correct.

NO CONFLICT EXISTS AMONG THE CIRCUITS

Petitioners attempt to create the impression that there is a great conflict among the circuits on the issue; however, no other circuit court of appeal has disagreed with the Fifth Circuit. *See Davis v. Bender Shipbuilding & Repair Co.*, 27 F.3d 426, 430 (9th Cir.), *cert. denied*, 513 U.S. 1000 (1994). The *Davis* Court reasoned:

> The plaintiffs' attempt to distinguish this case from *Miles* by stressing that the defendant in this case is the shipbuilder, not a "Jones Act defendant." Yet there is nothing in *Miles*' reasoning to suggest that the decision turned upon the identity of the defendant. Indeed, not all of the defendants in *Miles* were Jones Act Employers. [111 S.Ct. at 319-20]. Moreover, the principle underlying the Supreme Court's decision in both *Miles* and *Moragne* is that the general maritime law is intended to supplement the statutory remedies created by Congress, not to enhance or replace them. *Miles* instructs the lower federal courts that a claim for lost future earnings is not available in connection with a maritime death for which Congress has already provided a remedy and has excluded such damages. The identity of the defendant is irrelevant to these considerations.

The Second Circuit, in *Preston v. Franz*, 11 F.3d 357, 358 (2nd Cir. 1993) and *Wahlstrom v. Kawasaki Heavy Industry, Ltd.*, 4 F.3d 1084, 1089 (2nd Cir. 1993), *cert. denied*, 510 U.S. 1114 (1994) agreed with the principle that

the recognition of the pecuniary damages policy suggested by the Jones Act and DOHSA is not limited to the four corners of those acts.

That district courts, almost all within the Fifth Circuit, have expressed differing opinions on the issue, is now moot given the Fifth Circuit's ruling. It is utterly premature to suggest that this Court's supervisory jurisdiction is needed here and now, as every circuit court to address the issue so far has ruled the same way. They all have been true to the principles and reasoning of this Court in *Miles*.

CONCLUSION

The petition for the grant of a writ of *certiorari* should be denied.

Respectfully submitted,

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